

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2003-000208-001 DT

03/03/2004

waiver was intelligently and voluntarily made. Appellee concurs with the position urged by Appellant and concedes the error.

It is the responsibility of the trial judge to inform a criminal defendant of all of the constitutional rights enumerated in State v. Avila¹ and Boykin v. Alabama² as the submission to the trial court is tantamount to a guilty plea. It appears from the record in this case that the Appellant was specifically advised only of his right to have a jury trial in the case. However, Appellant is not automatically entitled to have his conviction vacated and a new trial ordered if the Appellant was aware of these constitutional rights from another source prior to the submission to the trial judge. Therefore, the proper procedure for an appellate court is to remand the matter to the trial judge for a hearing to determine whether the Appellant was aware of all of the constitutional rights he waives by pleading guilty or submitting his case to the court on stipulated evidence. Should the trial judge find that the Appellant was not aware of all of the constitutional rights, then the trial judge shall vacate the judgment and sentence imposed, and set the matter for a new trial.

IT IS THEREFORE ORDERED remanding this matter back to the Phoenix City Court for a hearing consistent with this opinion.

/ s / HONORABLE MICHAEL D. JONES

JUDICIAL OFFICER OF THE SUPERIOR COURT

¹ 127 Ariz. 21, 617 P.2d 1137 (1980).

² 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969)